

1 **UTAH CONSTRUCTION TRADES CONTINUING**

2 **EDUCATION AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael T. Morley**

6 Senate Sponsor: J. Stuart Adams

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Utah Construction Trades Licensing Act related to
11 continuing education.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines "approved continuing education;"
- 15 ▶ requires a contractor licensee to complete six hours of approved continuing
16 education during a two-year licensing cycle;
- 17 ▶ requires the commission, with the concurrence of the division, to establish a
18 program of approved continuing education for contractor licensees;
- 19 ▶ authorizes the Division of Occupational and Professional Licensing to charge a
20 reasonable fee to administer the continuing education program; and
- 21 ▶ modifies a provision relating to what constitutes unlawful conduct under the Utah
22 Construction Trades Licensing Act.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **58-55-102**, as last amended by Laws of Utah 2008, Chapter 215

30 **58-55-303**, as last amended by Laws of Utah 2001, Chapter 198

31 **58-55-501**, as last amended by Laws of Utah 2008, Chapter 377

32 ENACTS:

33 **58-55-302.5**, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **58-55-102** is amended to read:

37 **58-55-102. Definitions.**

38 In addition to the definitions in Section 58-1-102, as used in this chapter:

39 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,
40 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,
41 except as provided in Subsection (1)(b).

42 (b) "Alarm business or company" does not include:

43 (i) a person engaged in the manufacture and sale of alarm systems when that person is
44 not engaged in the installation, maintenance, alteration, repair, replacement, servicing, or
45 monitoring of alarm systems, and the manufacture or sale occurs only at a place of business
46 established by the person engaged in the manufacture or sale and does not involve site visits at
47 the place or intended place of installation of an alarm system; or

48 (ii) an owner of an alarm system, or an employee of the owner of an alarm system who
49 is engaged in installation, maintenance, alteration, repair, replacement, servicing, or
50 monitoring of the alarm system owned by that owner.

51 (2) "Alarm company agent" means any individual employed within this state by a
52 person engaged in the alarm business.

53 (3) "Alarm system" means equipment and devices assembled for the purpose of:

54 (a) detecting and signaling unauthorized intrusion or entry into or onto certain
55 premises; or

56 (b) signaling a robbery or attempted robbery on protected premises.

57 (4) "Apprentice electrician" means a person licensed under this chapter as an

58 apprentice electrician who is learning the electrical trade under approved supervision of a
59 master electrician, residential master electrician, a journeyman electrician, or a residential
60 journeyman electrician.

61 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice
62 plumber who is learning the plumbing trade under approved supervision of a master plumber,
63 residential master plumber, journeyman plumber, or a residential journeyman plumber.

64 (6) "Approved continuing education" means instruction provided through courses
65 under a program established under Subsection 58-55-302.5(2).

66 [~~6~~] (7) "Approved supervision" means the immediate supervision of apprentices by
67 qualified licensed electricians or plumbers as a part of a planned program of training.

68 [~~7~~] (8) "Board" means the Electrician Licensing Board, Alarm System Security and
69 Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

70 [~~8~~] (9) "Combustion system" means an assembly consisting of:

71 (a) piping and components with a means for conveying, either continuously or
72 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of
73 the appliance;

74 (b) the electric control and combustion air supply and venting systems, including air
75 ducts; and

76 (c) components intended to achieve control of quantity, flow, and pressure.

77 [~~9~~] (10) "Commission" means the Construction Services Commission created under
78 Section 58-55-103.

79 [~~10~~] (11) "Construction trade" means any trade or occupation involving:

80 (a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition
81 to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation
82 or other project, development, or improvement to other than personal property; and

83 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as
84 defined in Section 58-56-3; or

85 (b) installation or repair of a residential or commercial natural gas appliance or

86 combustion system.

87 ~~[(11)]~~ (12) "Construction trades instructor" means a person licensed under this chapter
88 to teach one or more construction trades in both a classroom and project environment, where a
89 project is intended for sale to or use by the public and is completed under the direction of the
90 instructor, who has no economic interest in the project.

91 ~~[(12)]~~ (13) (a) "Contractor" means any person who for compensation other than wages
92 as an employee undertakes any work in the construction, plumbing, or electrical trade for
93 which licensure is required under this chapter and includes:

94 (i) a person who builds any structure on his own property for the purpose of sale or
95 who builds any structure intended for public use on his own property;

96 (ii) any person who represents himself to be a contractor by advertising or any other
97 means;

98 (iii) any person engaged as a maintenance person, other than an employee, who
99 regularly engages in activities set forth under the definition of "construction trade";

100 (iv) any person engaged in any construction trade for which licensure is required
101 under this chapter; or

102 (v) a construction manager who performs management and counseling services on a
103 construction project for a fee.

104 (b) "Contractor" does not include an alarm company or alarm company agent.

105 ~~[(13)]~~ (14) (a) "Electrical trade" means the performance of any electrical work
106 involved in the installation, construction, alteration, change, repair, removal, or maintenance
107 of facilities, buildings, or appendages or appurtenances.

108 (b) "Electrical trade" does not include:

109 (i) transporting or handling electrical materials;

110 (ii) preparing clearance for raceways for wiring; or

111 (iii) work commonly done by unskilled labor on any installations under the exclusive
112 control of electrical utilities.

113 (c) For purposes of Subsection ~~[(13)]~~ (14)(b):

114 (i) no more than one unlicensed person may be so employed unless more than five
115 licensed electricians are employed by the shop; and

116 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio
117 permitted by this Subsection [~~(13)~~] (14)(c).

118 [~~(14)~~] (15) "Employee" means an individual as defined by the division by rule giving
119 consideration to the definition adopted by the Internal Revenue Service and the Department of
120 Workforce Services.

121 [~~(15)~~] (16) "Engage in a construction trade" means to:

122 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged
123 in a construction trade; or

124 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person
125 to believe one is or will act as a contractor.

126 [~~(16)~~] (17) (a) "Financial responsibility" means a demonstration of a current and
127 expected future condition of financial solvency evidencing a reasonable expectation to the
128 division and the board that an applicant or licensee can successfully engage in business as a
129 contractor without jeopardy to the public health, safety, and welfare.

130 (b) Financial responsibility may be determined by an evaluation of the total history
131 concerning the licensee or applicant including past, present, and expected condition and
132 record of financial solvency and business conduct.

133 [~~(17)~~] (18) "Gas appliance" means any device that uses natural gas to produce light,
134 heat, power, steam, hot water, refrigeration, or air conditioning.

135 [~~(18)~~] (19) (a) "General building contractor" means a person licensed under this
136 chapter as a general building contractor qualified by education, training, experience, and
137 knowledge to perform or superintend construction of structures for the support, shelter, and
138 enclosure of persons, animals, chattels, or movable property of any kind or any of the
139 components of that construction except plumbing, electrical work, mechanical work, and
140 manufactured housing installation, for which the general building contractor shall employ the
141 services of a contractor licensed in the particular specialty, except that a general building

142 contractor engaged in the construction of single-family and multifamily residences up to four
143 units may perform the mechanical work and hire a licensed plumber or electrician as an
144 employee.

145 (b) The division may by rule exclude general building contractors from engaging in
146 the performance of other construction specialties in which there is represented a substantial
147 risk to the public health, safety, and welfare, and for which a license is required unless that
148 general building contractor holds a valid license in that specialty classification.

149 ~~[(19)]~~ (20) (a) "General engineering contractor" means a person licensed under this
150 chapter as a general engineering contractor qualified by education, training, experience, and
151 knowledge to perform construction of fixed works in any of the following: irrigation, drainage,
152 water, power, water supply, flood control, inland waterways, harbors, railroads, highways,
153 tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and
154 industrial plants requiring specialized engineering knowledge and skill, piers, and foundations,
155 or any of the components of those works.

156 (b) A general engineering contractor may not perform construction of structures built
157 primarily for the support, shelter, and enclosure of persons, animals, and chattels.

158 ~~[(20)]~~ (21) "Immediate supervision" means reasonable direction, oversight, inspection,
159 and evaluation of the work of a person, in or out of the immediate presence of the supervising
160 person, so as to ensure that the end result complies with applicable standards.

161 ~~[(21)]~~ (22) "Individual" means a natural person.

162 ~~[(22)]~~ (23) "Journeyman electrician" means a person licensed under this chapter as a
163 journeyman electrician having the qualifications, training, experience, and knowledge to wire,
164 install, and repair electrical apparatus and equipment for light, heat, power, and other
165 purposes.

166 ~~[(23)]~~ (24) "Journeyman plumber" means a person licensed under this chapter as a
167 journeyman plumber having the qualifications, training, experience, and technical knowledge
168 to engage in the plumbing trade.

169 ~~[(24)]~~ (25) "Master electrician" means a person licensed under this chapter as a master

170 electrician having the qualifications, training, experience, and knowledge to properly plan,
171 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment
172 for light, heat, power, and other purposes.

173 ~~[(25)]~~ (26) "Master plumber" means a person licensed under this chapter as a master
174 plumber having the qualifications, training, experience, and knowledge to properly plan and
175 layout projects and supervise persons in the plumbing trade.

176 ~~[(26)]~~ (27) "Person" means a natural person, sole proprietorship, joint venture,
177 corporation, limited liability company, association, or organization of any type.

178 ~~[(27)]~~ (28) (a) "Plumbing trade" means the performance of any mechanical work
179 pertaining to the installation, alteration, change, repair, removal, maintenance, or use in
180 buildings, or within three feet beyond the outside walls of buildings of pipes, fixtures, and
181 fittings for:

- 182 (i) delivery of the water supply;
- 183 (ii) discharge of liquid and water carried waste; or
- 184 (iii) the building drainage system within the walls of the building.

185 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,
186 fixtures and fixture traps, soil, waste and vent pipes, and the building drain and roof drains
187 together with their devices, appurtenances, and connections where installed within the outside
188 walls of the building.

189 ~~[(28)]~~ (29) (a) "Ratio of apprentices" means, for the purpose of determining
190 compliance with the requirements for planned programs of training and electrician apprentice
191 licensing applications, the shop ratio of apprentice electricians to journeyman or master
192 electricians shall be one journeyman or master electrician to one apprentice on industrial and
193 commercial work, and one journeyman or master electrician to three apprentices on residential
194 work.

195 (b) On-the-job training shall be under circumstances in which the ratio of apprentices
196 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to
197 three apprentices to one supervisor on residential projects.

198 [~~(29)~~] (30) "Residential and small commercial contractor" means a person licensed
199 under this chapter as a residential and small commercial contractor qualified by education,
200 training, experience, and knowledge to perform or superintend the construction of
201 single-family residences, multifamily residences up to four units, and commercial construction
202 of not more than three stories above ground and not more than 20,000 square feet, or any of
203 the components of that construction except plumbing, electrical work, mechanical work, and
204 manufactured housing installation, for which the residential and small commercial contractor
205 shall employ the services of a contractor licensed in the particular specialty, except that a
206 residential and small commercial contractor engaged in the construction of single-family and
207 multifamily residences up to four units may perform the mechanical work and hire a licensed
208 plumber or electrician as an employee.

209 [~~(30)~~] (31) "Residential building," as it relates to the license classification of
210 residential journeyman plumber and residential master plumber, means a single or multiple
211 family dwelling of up to four units.

212 [~~(31)~~] (32) "Residential journeyman electrician" means a person licensed under this
213 chapter as a residential journeyman electrician having the qualifications, training, experience,
214 and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat,
215 power, and other purposes on buildings using primarily nonmetallic sheath cable.

216 [~~(32)~~] (33) "Residential journeyman plumber" means a person licensed under this
217 chapter as a residential journeyman plumber having the qualifications, training, experience,
218 and knowledge to engage in the plumbing trade as limited to the plumbing of residential
219 buildings.

220 [~~(33)~~] (34) "Residential master electrician" means a person licensed under this chapter
221 as a residential master electrician having the qualifications, training, experience, and
222 knowledge to properly plan, layout, and supervise the wiring, installation, and repair of
223 electrical apparatus and equipment for light, heat, power, and other purposes on residential
224 projects.

225 [~~(34)~~] (35) "Residential master plumber" means a person licensed under this chapter

226 as a residential master plumber having the qualifications, training, experience, and knowledge
227 to properly plan and layout projects and supervise persons in the plumbing trade as limited to
228 the plumbing of residential buildings.

229 ~~[(35)]~~ (36) "Residential project," as it relates to an electrician or electrical contractor,
230 means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard
231 rules and regulations governing this work, including the National Electrical Code, and in
232 which the voltage does not exceed 250 volts line to line and 125 volts to ground.

233 ~~[(36)]~~ (37) (a) "Specialty contractor" means a person licensed under this chapter under
234 a specialty contractor classification established by rule, who is qualified by education,
235 training, experience, and knowledge to perform those construction trades and crafts requiring
236 specialized skill, the regulation of which are determined by the division to be in the best
237 interest of the public health, safety, and welfare.

238 (b) A specialty contractor may perform work in crafts or trades other than those in
239 which he is licensed if they are incidental to the performance of his licensed craft or trade.

240 ~~[(37)]~~ (38) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-55-501.

241 ~~[(38)]~~ (39) "Unprofessional conduct" is as defined in Sections 58-1-501 and
242 58-55-502 and as may be further defined by rule.

243 ~~[(39)]~~ (40) "Wages" means amounts due to an employee for labor or services whether
244 the amount is fixed or ascertained on a time, task, piece, commission, or other basis for
245 calculating the amount.

246 Section 2. Section **58-55-302.5** is enacted to read:

247 **58-55-302.5. Continuing education requirements of contractor licensees --**

248 **Continuing education courses.**

249 (1) Each contractor licensee under a license issued under this chapter shall complete
250 six hours of approved continuing education during each two-year renewal cycle established by
251 rule under Subsection 58-55-303(1).

252 (2) The commission shall, with the concurrence of the division, establish by rule a
253 program of approved continuing education for contractor licensees.

254 (3) The division may contract with a person to establish and maintain a continuing
255 education registry to include:

256 (a) an online application for a continuing education course provider to apply to the
257 division for approval of the course for inclusion in the program of approved continuing
258 education;

259 (b) a list of courses that the division has approved for inclusion in the program of
260 approved continuing education; and

261 (c) a list of courses that:

262 (i) a contractor licensee has completed under the program of approved continuing
263 education; and

264 (ii) the licensee may access to monitor the licensee's compliance with the continuing
265 education requirement established under Subsection (1).

266 (4) The division may charge a fee, as established by the division under Section
267 63J-1-504, to administer the requirements of this section.

268 Section 3. Section **58-55-303** is amended to read:

269 **58-55-303. Term of license -- Expiration -- Renewal.**

270 (1) Each license issued under this chapter shall be issued in accordance with a
271 two-year renewal cycle established by rule. The division may by rule extend or shorten a
272 renewal period by as much as one year to stagger the renewal cycle it administers.

273 (2) At the time of renewal, the licensee shall show satisfactory evidence of:

274 (a) continuing financial responsibility as required under Section 58-55-306[-]; and

275 (b) for a contractor licensee, completion of six hours of approved continuing
276 education, as required in Section 58-55-302.5.

277 (3) Each license automatically expires on the expiration date shown on the license
278 unless the licensee renews the license in accordance with Section 58-1-308.

279 (4) The requirements of Subsection 58-55-302(9) shall also apply to applicants
280 seeking to renew or reinstate a license.

281 (5) In addition to any other requirements imposed by law, if a license has been

282 suspended or revoked for any reason, the applicant must pay in full all fines imposed by the
283 division, resolve any outstanding citations or disciplinary actions with the division, satisfy any
284 Section 58-55-503 judgment and sentence or nontrial resolution, complete a new financial
285 responsibility review as required under Section 58-55-306, using only titled assets, and pay in
286 full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien
287 Restriction and Lien Recovery Fund Act.

288 Section 4. Section **58-55-501** is amended to read:

289 **58-55-501. Unlawful conduct.**

290 Unlawful conduct includes:

291 (1) engaging in a construction trade, acting as a contractor, an alarm business or
292 company, or an alarm company agent, or representing oneself to be engaged in a construction
293 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
294 person doing any of these is appropriately licensed or exempted from licensure under this
295 chapter;

296 (2) acting in a construction trade, as an alarm business or company, or as an alarm
297 company agent beyond the scope of the license held;

298 (3) hiring or employing in any manner an unlicensed person, other than an employee
299 for wages who is not required to be licensed under this chapter, to engage in a construction
300 trade for which licensure is required or to act as a contractor or subcontractor in a construction
301 trade requiring licensure;

302 (4) applying for or obtaining a building permit either for oneself or another when not
303 licensed or exempted from licensure as a contractor under this chapter;

304 (5) issuing a building permit to any person for whom there is no evidence of a current
305 license or exemption from licensure as a contractor under this chapter;

306 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
307 other person who is required to be licensed under this chapter but who is not licensed or is
308 otherwise not entitled to obtain or receive the benefit of the building permit;

309 (7) failing to obtain a building permit when required by law or rule;

310 (8) submitting a bid for any work for which a license is required under this chapter by
311 a person not licensed or exempted from licensure as a contractor under this chapter;

312 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
313 with an application to obtain or renew a license under this chapter;

314 (10) allowing one's license to be used by another except as provided by statute or rule;

315 (11) doing business under a name other than the name appearing on the license, except
316 as permitted by statute or rule;

317 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
318 journeyman plumber, residential journeyman plumber, journeyman electrician, master
319 electrician, or residential electrician, failing to directly supervise an apprentice under one's
320 supervision or exceeding the number of apprentices one is allowed to have under his
321 supervision;

322 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
323 funds in payment for a specific project from an owner or any other person, which funds are to
324 pay for work performed or materials and services furnished for that specific project, and after
325 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
326 amounts due and payable to persons who performed work or furnished materials or services
327 within a reasonable period of time;

328 (14) employing an unlicensed alarm business or company or an unlicensed individual
329 as an alarm company agent, except as permitted under the exemption from licensure
330 provisions under Section 58-1-307;

331 (15) if licensed as an alarm company or alarm company agent, filing with the division
332 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
333 false or fraudulent and intended to mislead the division in its consideration of the applicant for
334 licensure;

335 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

336 (a) the building or construction laws of this state or any political subdivision;

337 (b) the safety and labor laws applicable to a project;

338 (c) any provision of the health laws applicable to a project;

339 (d) the workers' compensation insurance laws of the state applicable to a project;

340 (e) the laws governing withholdings for employee state and federal income taxes,
341 unemployment taxes, FICA, or other required withholdings; or

342 (f) reporting, notification, and filing laws of this state or the federal government;

343 (17) aiding or abetting any person in evading the provisions of this chapter or rules
344 established under the authority of the division to govern this chapter;

345 (18) engaging in the construction trade or as a contractor for the construction of
346 residences of up to two units when not currently registered or exempt from registration as a
347 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien
348 Recovery Fund Act;

349 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
350 written contract the notification required in Section 38-11-108;

351 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25; or

352 (21) if licensed as a contractor, not completing [~~a three-hour core education class and
353 an additional three hours of professional education approved by the division and the
354 Construction Services Commission within each two-year renewal cycle, beginning with the
355 two-year renewal cycle that starts July 1, 2005, and ends June 30, 2007 unless an exemption
356 has been granted to the licensee by the Construction Services Commission, with the
357 concurrence of the division, except that this Subsection (21) is repealed effective July 1, 2010
358 and its implementation is subject to the division receiving adequate funding for its
359 implementation through a legislative appropriation] the approved continuing education
360 required under Section 58-55-302.5.~~